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March 26, 1997

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Ex Parte Filing

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of General Counsel

In re Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

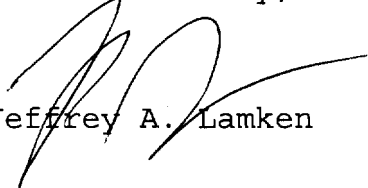
Dear Mr. Caton:

Enclosed for filing in this docket are two copies of a letter to Sharon Diskin together with its attachments. I sent this letter and the attachments to Ms. Diskin today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter and the attachments in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7953.

Thank you for your consideration.

Yours sincerely,


Jeffrey A. Lamken

cc: Sharon Diskin

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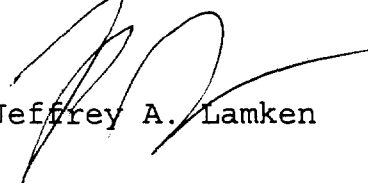
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Ex Parte Filing

Ms. Sharon Diskin
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W., 6th Floor
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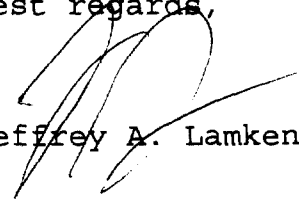
In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Sharon:

I wanted to thank you and Chris for taking the time yesterday to meet with me and the other representatives of the RBOC Payphone Coalition. In the hope that they will be of assistance to you in your work on this matter, I am enclosing copies of two recent ex parte letters sent to Mary Beth Richards and Kathy Franco.

If you have any questions concerning these letters or if I can be of any assistance in this matter, please call me at (202) 326-7953.

Best regards,


Jeffrey A. Lamken

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March 19, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Mary Beth:

I wanted to thank you and your staff for taking the time to meet with me and the members of the RBOC Payphone Coalition on Monday. I believe that we made substantial progress in that meeting and in the earlier meeting with the enforcement division. We sincerely appreciate the dedication you all have shown toward identifying and working through, in a timely manner, the issues that have surfaced in this 11th hour of payphone regulatory reform.

In your continuing deliberations on the question of what federal tariffs are required, I thought it might be helpful for me to provide in writing the citations that underlie our reading of the payphone orders. As we discussed, the Coalition does not dispute that the Commission's payphone orders by their terms impose a federal tariffing requirement. Obviously, however, that requirement does not apply to all LEC services. Rather, the payphone orders, by their plain terms, place three limits on the types of services that must be federally tariffed.

First, the federal tariffing requirement applies only to network features and functions, and not to non-network services.

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Federal Communications Commission

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This limitation follows directly from the language of the orders.¹ It is also consistent with the nature of the ONA and CEI rules on which the payphone orders were modeled. Thus, the payphone orders' federal tariffing requirement should be read as applying only to features and functions of the network (e.g., line-side answer supervision, if offered on an unbundled basis), and not to non-network services such as installation and maintenance, refund return/repair referral, and inside wire services.²

Second, the federal tariffing requirement applies only to payphone-specific network features and functions. Thus, for example, features of the smart-line used by dumb sets (e.g., line side answer supervision and call screening) would have to be federally tariffed if offered by and used by a LEC on an unbundled basis. But features that are generally available to all local exchange customers and are thus incidental to, but not primarily designed for, payphone service would not be subject to federal tariffing. Touchtone service and various custom calling features, for example, would not be considered payphone-specific and would not have to be federally tariffed. Once again, this reading of the orders is supported by their plain language³ and by common sense.

¹See, e.g., Recon. Order ¶ 166 ("We clarify that any unbundled network features provided to a LEC payphone operation must . . . be tariffed in the federal and state jurisdictions" (emphasis added)); Report and Order ¶ 146 ("[I]ncumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations" (emphasis added)); Recon. Order ¶ 162 ("[A]ny basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction" (emphasis added)).

²Applying the tariffing requirement to these non-regulated services would represent unnecessary re-regulation of already competitive services, as the Commission itself has recognized. Recon. Order ¶ 166 (Report and Order does not "require access to unregulated services, such as installation and maintenance of unregulated CPE, and billing and collection" because these services "are available on a competitive basis and do not have to be provided by LECs as the only source of services.")

³Report and Order ¶ 147 ("We conclude that tariffs for payphone services must be filed with the Commission" (emphasis added)); id. ("[W]e conclude that Computer III tariff procedures and pricing are

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The purpose of the orders is to provide rules for payphones, not to impose federal regulation on all network services.

As I understand it, these first two limits are not in any way disputed. Questions arise only regarding the third, and final limiting principle -- that federal tariffing is required only for those payphone-specific network services that *the LEC's PSP itself* uses in providing payphone service. Under this limit, a LEC would file federal tariffs for an unbundled element only if its affiliated PSP uses that element. Thus, if a LEC-affiliated PSP uses only "smart" lines (for "dumb" payphone sets) but does not use unbundled features like line-side answer supervision, the LEC PSP would not file federal tariffs for line-side answer supervision, even if it offers that feature to competing PSPs in its state tariffs. On the other hand, if the LEC-affiliated PSP *itself* uses an unbundled feature like line-side answer supervision (as U S West does), a federal tariff would have to be filed (as U S West did).

This important limit on the federal tariffing requirement unambiguously appears in the text of the payphone orders. See, e.g., Report and Order ¶ 146 ("[I]ncumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations" (emphasis added)); id. ("[I]ncumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented 'smart payphones' or 'dumb' payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs" (emphasis added)); id. ¶ 148 ("any basic transmission services provided by a LEC to its own payphone operations must be available under tariff to other payphone service providers pursuant to Computer II" (emphasis added)).

The Order on Reconsideration is particularly clear on this point. It explains:

To implement [Section 276's requirements, the Report and Order] established a requirement that LECs provide tariffed payphone services to independent payphone providers that they provide to the their own payphone

more appropriate for basic payphone services provided by LECs to other payphone providers" (emphasis added)); Recon. Order ¶ 162 (LECs must "provide tariffed payphone services to independent payphone providers" (emphasis added)); ibid. (LECs to offer "tariffed, nondiscriminatory basic payphone services" to competing PSPs (emphasis added)).

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operations. Federal tariffing enables the Commission to directly ensure that payphone services comply with Section 276.

Recon. Order ¶ 162 (emphasis added). In the very same paragraph, the Order on Reconsideration explains that, "as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features must be tariffed in the state and federal jurisdiction." Ibid. Three paragraphs later, the Order on Reconsideration reiterates this yet again: "We clarify that any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions." Id. ¶ 165 (emphasis added).

This language is also consistent with the philosophy underlying the CEI and ONA principles on which the payphone orders were based. Federal tariffing of every feature the LEC itself takes ensures identical treatment of LEC and non-LEC PSPs. Moreover, absent this reasonable limit, the problems of mix-and-match and rate arbitrage -- with the consequent damage to state regulatory policy -- loom large. It is one thing to require federal tariffing of the limited number of network services that the LEC provides to its own operations. It is quite another to require LECs to file both state and federal tariffs for all network-based payphone services they offer, whether or not they use them themselves.⁴

Given the unambiguous language of the orders and the language's consistency with both CEI and ONA principles, it is not surprising that Coalition members concluded that the payphone orders did not require federal tariffs for unbundled elements unless those elements were used by the LEC-affiliated PSP. (SBC and U S West, however, would be in compliance even if the tariffing requirement is not limited to elements used by their own payphone units.) In this respect, I should note that the "Summary of Projected Reporting, Recordkeeping, and Other Compliance

⁴This is not to say that including such a limit eliminates these problems, or makes the federal tariffing requirement consistent with the ONA framework (which bars mixing and matching, and does not require federal tariffs for intrastate end-user features). Instead, it reduces the impact. Thus, Coalition members are willing to meet the Commission's tariffing requirements to expedite approval of the CEI plans, and will continue to work with the Commission on the broader issues raised thereby.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards

March 19, 1997

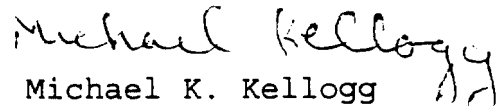
Page 5

Requirements" exhibits the same understanding. It states: "Any basic network services or unbundled features *used by a LECs operations to provide payphone services* must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis and must be tariffed in the state and federal jurisdiction." Recon. Order ¶ 263.

In our view, the appropriate approach for the Commission is to approve the CEI plans as they are today and then conduct a proceeding to determine whether or not federal tariffs should be required for network-based payphone services that are provided to independent PSPs but are not used by the LEC's payphone unit or affiliate. Whatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements. The primary difficulty is one of timing. The majority of Coalition members have targeted April 1, 1997 as the transformation date in light of the difficulties inherent in mid-month accounting changes. The Coalition thus will support and comply with any reasonable resolution of the tariffing issue, so long as it does not delay the rapid transformation of the payphone industry that Congress intended, or defer Congress's twin goals of promoting "competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

Once again, I want to express my and the Coalition's gratitude for the attention you have paid to this matter.

Yours Sincerely,


Michael K. Kellogg

cc: Regina Keeney
James Schlichting
Richard Welch
Christopher Wright

Tom Boasberg
James Casserly
James Coltharp
Dan Gonzalez

John Muleta
Michael Carowitz
Rose Crellin

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March 25, 1997

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Kathy Franco
Legal Counsel to Bureau Chief
Common Carrier Bureau
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In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth and Kathy:

Once again, I want to express my sincere appreciation for your efforts and the efforts of your staff with respect to implementation of the payphone orders. As a follow up to our conversations, I am offering the following brief summary of how Coalition members offer the four functions that recently have become the focus of attention, and the citations that underlie the Coalition's interpretation of the payphone orders' federal tariffing requirements.

A. My best current information regarding each of the four features at issue is as follows:

1. Answer Supervision. Line-side answer supervision is the provision of a signal to the payphone set indicating that the call has been answered or disconnected. Using "trunk-side answer supervision," the central office switch determines that the call has been answered or disconnected. It in turn offers an answer or disconnect signal to the CPE on the line side of the switch by means of a battery reversal. On coin calls, the smart payphone interprets this information and handles coins accordingly. For dumb payphones, coin collection is controlled not through use of

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line-side answer supervision but rather through "coin supervision" commands (collect or return) that are offered as part of the "smart line for dumb payphones." The "coin supervision" function is described below.

Currently, all of the Coalition members (with one exception) have effective state or federal tariffs, or proposed tariffs that will become effective on or before April 15, 1997, in which line-side answer supervision is offered. Most Coalition members offer answer supervision as a bundled part of a line for "smart phones," although it is available as an unbundled feature in some states. One Coalition member has tariffed line-side answer supervision only in one state and does not offer it in the remaining states. After this member tariffed the feature in that one state, no demand developed; the member therefore did not tariff the feature in other states.

2. Call Screening. These functions are used to prevent payphone fraud.

(a) Selective Class of Call Screening/Originating Line Screening: This feature provides a special code to help prevent payphone users from charging calls to the payphone.

Every Coalition member has state or federal tariffs, or proposed tariffs that will become effective by April 15, 1997, in which this feature is offered. Most commonly, this feature is offered as a bundled element of the two basic (smart and dumb) payphone lines.

(b) Billed Number Screening: This feature prevents calls made from other phones from being billed to the payphone (e.g., collect calls to the payphone, calls charged to third-party numbers, etc.).

Every Coalition member has state or federal tariffs, or proposed tariffs that will become effective by April 15, 1997, in which this feature is offered. Most Coalition members offer billed number screening as a bundled element of the two basic (smart and dumb) payphone lines.

(c) International Toll Blocking: This feature blocks direct dial international calls from the payphone, but allows for completion of direct dial domestic calls.

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Every Coalition member has federal tariffs in place for this feature.

3. Coin Supervision. Coin supervision is used to control coin collection and return on the "smart line" for "dumb phones." In fact, it is one of the critical features that makes the "smart line" "smart." Answer and disconnect indications are received by the central office switch on the trunk-side. The switch, in turn, invokes the appropriate coin collect or coin return function of the payphone station by sending DC voltage to operate the coin relay. The "dumb line" for "smart phones" does not use this feature. Smart payphone sets rely on an algorithm, voice recognition, or answer supervision instead.

Every Coalition member offers "coin supervision" as a bundled element of their "smart line" under state tariff, or under proposed state tariffs that will become effective on or before April 15, 1997. None offer it as an unbundled feature and, as a result, none have filed federal tariffs for this feature.

4. Coin/Call Rating. This feature provides the payphone set with "rating" information on sent-paid (coin) toll calls. Using the location of the payphone and the destination number of the call, the network looks up the appropriate rate in a "rating table." All Coalition members offer coin/call rating as a bundled part of a "smart line for dumb phones" under state tariff. None offer it as an unbundled feature and, as a result, none have filed federal tariffs for this feature.

Currently, switches only contain a single rating table for all payphones. Individual line coin rating would permit rating on a line-by-line basis, but it would necessitate the purchase and installation of additional hardware and software. Most Coalition members do not offer individually ratable payphone lines. Nonetheless, for "dumb" and "smart" payphone sets alike, the payphone set itself -- not the network -- controls the rate for local (non-toll) coin calls.

B. With respect to federal tariffing, I thought it would be helpful to provide you with the citations that support the Coalition's position.

The payphone orders address three distinct but related issues. The first is the features the LECs must offer. The second is the features the LECs must unbundle. And the third is the features the LECs must tariff with the Commission. With

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respect to what the LECs must offer, I believe the Coalition and the staff are in agreement. Consistent with general ONA, CEI, and Computer III principles, LECs must offer competing PSPs the same basic smart and dumb lines they offer to their own PSP operations, plus any unbundled features or functions they use themselves.¹ With respect to what must be unbundled, I think the staff and the Coalition also are in accord. Again, consistent with general ONA, CEI, and Computer III principles, a LEC must offer any feature on an unbundled basis if it uses the feature on such a basis in its own operations, see note 1, supra, and it must offer further unbundled functionality on request under the criteria established in ONA or if ordered to do so by a state, Report and Order ¶ 148.

Where the Coalition and the staff differ is on what must be tariffed with the FCC. As I have explained before, the Coalition believes -- with strong support in the payphone orders -- that federal tariffs are required only for those features a LEC itself takes. The staff, I understand, may have a slightly broader reading, under which federal tariffs are required for any feature available on an unbundled basis, whether or not the LEC takes the feature itself. Common to both of these approaches, however, is recognition of the principle that one cannot require a federal tariff for an individual feature unless it is unbundled. That is to say, it makes no sense to speak of tariffing an individual feature where that feature is offered only as part of a bundled package. Tariffing of individual features can only be achieved if those features have been unbundled.

¹See Report and Order ¶ 146 ("LECs must provide coin service so competitive payphone providers can offer payphones services using either [1] instrument-implemented 'smart payphones' or [2] 'dumb' payphones that utilize central office coin services, or [3] some combination of the two in a manner similar to the LECs."); id. ¶ 148 ("[A]ny basic transmission services provided by a LEC to its own payphone operations must be available under tariff to other payphone service providers pursuant to Computer II" (emphasis added)); Recon. Order ¶ 162 ("LECs [must] provide tariffed payphone services to independent payphone providers that they provide to the their own payphone operations." (emphasis added)); ibid. ("[A]ny basic network services or unbundled features used by a LEC's operations to provide payphone service must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis." (emphasis added)).

Mary Beth Richards
Kathy Franco
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For this reason, the Coalition does not believe that the payphone orders can be read as supporting a federal tariff requirement for features that are bundled into a basic payphone line and that are not available on an unbundled basis. To satisfy such a tariffing requirement, either the entire basic line would have to be tariffed, or the line would have to be broken up and unbundled into its constituent elements. Both of these options were considered by the Commission and rejected. As to the former, the Commission considered a federal tariffing requirement for basic, bundled payphone lines and declined to impose one. Instead, it declared that basic, bundled payphone lines can be tariffed with the states alone. See Recon. Order ¶ 163 ("LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276.").²

Indeed, the Order on Reconsideration expressly recognizes that federal tariffs are required only for features that have been unbundled. Paragraph 163 explains what must be filed in each jurisdiction. It first describes what must be tariffed in the states: "LECs must file intrastate tariffs for these [basic, bundled] payphone services and any unbundled features they provide to their own payphone services." It then provides when federal tariffs are required, limiting the federal tariffing to features that are unbundled: "LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the Report and Order." Recon. Order ¶ 163. The very same distinction is drawn by the preceding paragraph, which explains:

LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. *LECs must file those tariffs with the state.* In addition, . . . any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent

²I should also point out that requiring federal tariffs for basic lines would tax the limits of switch memory, since it would double the number of "line codes" used for payphone lines.

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payphone providers on a nondiscriminatory, tariffed basis. *Those unbundled features or functions must be tariffed in the state and federal jurisdiction.*

Recon. Order ¶ 162 (emphasis added). This language makes it quite clear that federal tariffing of individual features at most extends to those features that are offered on an unbundled basis, and does not extend to features that have not been unbundled from the basic payphone line.

In any event, requiring federal tariffs for individual features even though they are not unbundled makes no sense, as it would in effect create an unbundling requirement under the guise of a tariffing rule. This would be inconsistent with the payphone orders in at least three different ways.

First, under the Commission's orders, LECs are required to provide a smart line and dumb line, plus any unbundled elements that they themselves use. See generally Letter from Michael K. Kellogg to Mary Beth Richards, March 19, 1997, at 3-5 (quoting the orders at length); see also note 1, supra. Surely if the Commission had intended to impose an unbundling requirement for specific features -- or the four specific features that are now the subject of attention -- it would have identified the features in its orders. But the payphone orders do no such thing. To the contrary, the requirement that there be a basic "smart line" and "dumb line" -- one essential requirement of the order -- presupposes bundling. No one offers a "smart line" without bundling "coin supervision" into it, as "coin supervision" is one of the critical features that makes the "smart line" smart.

Second, requiring unbundling under the guise of a tariffing requirement would be inconsistent with the Commission's decision not to impose burdens beyond those imposed by ONA and Computer III. CEI plans normally do not have to include unbundling or federal tariffing for features that the LECs themselves do not use. See, e.g., Memorandum Opinion and Order, NYNEX CEI Plan for Voice Messaging Services, 4 FCC Rcd 554, ¶ 15 (Com. Carrier Bureau 1989) ("For CEI purposes a BOC must only make available to others the same basic services that it uses [No] further unbundling . . . is required to satisfy CEI requirements."). The payphone orders determined that the usual CEI/ONA/Computer III requirements would apply, and declined to impose any additional conditions:

[W]e conclude that the Computer III and ONA nonstructural safeguards will provide an appropriate

Mary Beth Richards

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regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. . . . We conclude that we do not have to adopt any additional safeguards beyond Computer III and ONA because of the comprehensive nature of that regulatory structure and the lack of a record necessary to conclude that a more burdensome framework should be adopted and is in the public interest.

Report and Order ¶ 199. This makes sense: No one has explained why applying ONA and Computer III without modification will be insufficient to ensure full and fair competition between RBOC and non-RBOC PSPs.

Third -- and most important of all -- the Commission expressly rejected requests for federally-mandated unbundling of the four features identified above, and the independent PSPs clearly understood as much. With respect to *answer supervision*, the New Jersey Payphone Association (one of the many PSP industry groups represented by the same counsel) asked the Commission to reconsider its decision not to impose a federal unbundling requirement:

The Commission declined to require that "other network services and network elements should be unbundled and provided to payphone providers," except that the Bell Companies will be required to unbundle additional network elements "when requested by payphone providers based on the specific criteria established in Computer III and ONA proceedings. Order ¶ 147." NJPA requests limited reconsideration of this ruling to the extent it does not require the provision of *answer supervision* to independent PSPs as an unbundled element of the service offered by LECs to their own payphones.

Answer supervision is a critical element, the absence of which significantly detracts from the ability of independent PSPs to provide accurate billing of customer calls.

See Petition of NJPA for Partial Reconsideration and Clarification at 7 (Oct. 21, 1996) (emphasis added). This request was rejected in no uncertain terms. "On reconsideration, we decline to require further unbundling of payphone services beyond those established in the Report and Order." Recon. Order ¶ 165.

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The record with respect to "coin supervision" and "call rating" is similarly clear. The APCC specifically requested unbundling of the "coin supervision" function and "call rating" in ex partes before the Commission, and the Coalition filed an ex parte letter pointing out that it would be exceedingly costly to unbundle these features:

[S]ome commenters have requested unbundled coin control, coin supervision, and call rating service. While these services are available on the standard coin line, it is not feasible to "unbundle" them and offer them separately at this time. There is significant interdependence between these features, and they require a tremendous amount of coordinated communication between the payset and the network. Offering them on an unbundled basis would therefore necessitate significant and costly revisions to switch logic and operator service systems.

See Ex Parte Letter from Michael K. Kellogg to William F. Caton, Sept. 6, 1996, at 3.

In its orders, the FCC specifically cited this ex parte letter -- at the very page quoted above -- and rejected the APCC's request for unbundling beyond the provision of the two basic coin lines and any unbundled features used by the RBOCs themselves. See Report and Order ¶ 148 & n.509 ("We do not find that such unbundling is necessary to provide payphone services. In addition, some features would require substantial costs to make switch changes. [FN] See ex parte, Michael K. Kellogg to William F. Caton, Secretary, FCC, September 6, 1996, at 3; GVNW Comments at 5-7"); see also Recon. Order ¶ 148 ("The Report and Order declined to require additional unbundling of network elements for payphone service for all LECs. We found that such unbundling is not necessary to provide payphone services and that some features require substantial costs to make switch changes.").

Having rejected unbundling of these features in its orders -- based on lack of need and excess costs -- the Commission surely cannot suggest now that unbundling is necessary after all. There has been no change in the cost of switch modifications. And nothing suggests that unbundling these features has suddenly become necessary or even desirable. Indeed, there is no demand for individual, stand-alone features because there is no

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equipment designed to take advantage of such unbundling.³ We think it self-evident that the Commission would not reject an unbundling requirement as too costly and unnecessary when considered under the label "unbundling," only to adopt the same requirement under the label "tariffing."

Finally, even setting aside the terms of the payphone orders -- and pragmatic concerns about costs -- a requirement that RBOCs file unbundled federal tariffs for the four features identified above would conflict with established Commission policy. In particular, unbundling these four features would enable PSPs to "mix-and-match" state and federal lines and features, engaging in rate arbitrage and undermining jurisdictional allocations. Indeed, if the four listed features were unbundled, PSPs would be able to "reconstruct" the basic smart line and dumb line by purchasing a business line out of state tariffs and adding unbundled features from federal tariffs.

But the FCC rejected precisely this type of mixing and matching under QNA in the past, and for good reason. For one thing, there are severe separations problems. As the FCC explained:

First, a mix-and-match arrangement could result in a mismatch of BSE costs and revenues. As we have stated, many BSE costs are switch related and they are separated on a usage-sensitive basis. If an ESP takes BSEs from an interstate tariff while using local business lines as BSAs, the usage for such local lines presumably would be counted as intrastate for separation purposes. As a result, the costs of these BSEs would be apportioned to the state jurisdiction, but the revenues associated with the BSEs would be apportioned to the interstate jurisdiction, leading to a cost/revenue mismatch between the jurisdictions.

³Ex Parte from Michael K. Kellogg, Sept. 6, 1996, at 4 ("Moreover, it is far from clear that, even if LECs could make these services available on an unbundled basis, there would be any demand for them. The Coalition is not aware of any payphone station equipment in production today that could utilize unbundled elements of coin line functionality."). Indeed, the experience of each Coalition member is that, when these features are unbundled, next to no demand for them develops.

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Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 4 FCC Rcd 3983, 3989, ¶ 44 (1989); see Report and Order & Order on Further Reconsideration, Amendments of Part 69, 6 FCC Rcd 4524, 4535, ¶ 65 (1991) ("Some ESPs have requested that we permit them to mix-and-match federal and state BSAs and BSEs. The Notice explicitly decided against a mix-and-match option and commenters have presented us with no arguments that would lead to a different conclusion.").

More important still, this mix-and-match approach would seriously harm state pricing and regulatory policy. The states, the FCC has recognized, sometimes have different cost allocation formulae and pricing policies than the FCC. For example, some states allocate a greater portion of costs to optional features and less to the basic line than do federal regulations. In such circumstances, allowing end users to buy the basic line at the reduced state rate, and then add on enhanced features like network intelligence at a lower federal rate, would deny LECs the ability to recover all of their costs. The assumption underlying state regulatory policy -- that costs allocated to enhancements would be recovered through sales of enhancements -- ceases to be true. See 4 FCC Rcd at 3989, ¶ 45.

Lastly, state and federal regulators might place different restrictions on the use of BSAs and BSEs, making it difficult for "each jurisdiction to maintain its own regulatory policies and avoid intruding on the other jurisdiction's ability to implement its policies." Id. at 3989, ¶ 46. As the Commission later summarized, "We are concerned that mix-and-match could result in a mismatch of BSE costs and revenues, seriously undermine state policies, and create jurisdictional boundary problems." 6 FCC Rcd at 4535, ¶ 65.

These same problems exist under any proposal for federal tariffing of unbundled payphone elements. Of course, if the list of unbundled features is limited -- such as to those unbundled elements the RBOC PSPs themselves use or those features already offered on an unbundled basis under state tariff -- then the impact is mitigated (although not entirely removed). But any proposal that effectively unbundles and tariffs each constituent element of the smart line at federal rates will have profound and unacceptable fiscal and regulatory consequences. If the RBOCs had understood the payphone orders as allowing such a mix-and-match approach and such extensive unbundling -- and they did not because the orders do not provide for it -- they would have asked

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the Commission to reconcile the approach with the problems identified in the ONA proceeding, something the Commission did not do.

For the above reasons, the Coalition does not view the tariff submitted by the Roseville Telephone Company as an acceptable model. Rather than offering the basic smart and dumb lines to LEC and non-LEC PSPs on equal terms, as contemplated by the payphone orders, that tariff purports to unbundle each element of the smart and dumb line. The PSP then purchases a single line and reconstructs the "smart" or "dumb" line by adding individual features, mixing and matching from state and federal tariffs. But this approach is not required by the Commission's orders, which contain no such unbundling requirements. And it would be prohibitively expensive and administratively difficult for Coalition members to implement. As explained above, Coalition members would have to modify the logic of their switches to unbundle the features, implement new line codes (thereby depleting the limited supply), and endure unacceptable revenue and jurisdictional separations effects.

In fact, Roseville Telephone Company itself is not really offering unbundled access to the four features addressed above. Although Roseville's tariff purports to price smart line features individually, we are advised that Roseville is and will remain *technologically incapable* of fully unbundling these features. Instead, Roseville is relying on its own prediction that PSPs will always reconstruct the entire "smart" or "dumb" line from the individually-tariffed piece parts. But if a PSP were to order an unbundled element contrary to Roseville's prediction, Roseville would have to provision the entire bundled line for the price of the unbundled element alone. Surely the Commission cannot use the Roseville tariff as a "template" where Roseville Telephone Company itself cannot even implement the unbundling that it purports to offer.

In the end, it seems that the APCC is attempting to make the tail of tariffing wag the dog of unbundling. But the unbundling issue was resolved against the APCC and its members in the payphone orders themselves. Moreover, the APCC does not really want access to individual, unbundled elements. Instead, the APCC is attempting to obtain the type of rate arbitrage that the no mix-and-match rule was designed to avoid; the list of features identified by the APCC is precisely calculated to allow its members to reconstruct the entire basic smart and dumb line by buying a basic business line and adding on individual unbundled features from state and federal tariffs. And even if the APCC

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ultimately does not succeed, its attempt to relitigate unbundling issues can only work to disadvantage its primary competitors -- the RBOCs -- by holding up RBOC CEI plans and preventing RBOC PSPs from participating in carrier selection or receiving per-call compensation on equal terms with independent PSPs.

If the APCC truly wants unbundled access to specified features, the proper course is for it to employ the remedy identified by the Commission in its orders: Invoke the 120-day process under ONA and Computer III. As the Commission explained, "[u]nder Computer III, independent payphone providers may request additional unbundled features through a 120-day process and BOCs must indicate why they decline to provide the requested features." Recon. Order ¶ 165; see also Report and Order ¶ 148 ("Moreover, pursuant to Computer III and ONA requirements discussed below, BOCs must unbundle additional network elements when requested by payphone providers based on specific criteria established in the Computer III and ONA proceedings."). The APCC, however, has no interest in doing so because it knows that its requests simply do not meet Computer III/ONA criteria -- the costs are too high and the demand is next to non-existent.

Because of these considerations, the Coalition believes that any tariffing requirement that "unbundles" the four features described above cannot be imposed in this proceeding. Each request for unbundling that the APCC presses today -- answer supervision, call screening, coin supervision, and call rating -- was considered by the Commission as an unbundling issue during the regular comment cycle, and each was expressly rejected as unnecessary and excessively costly. For the APCC to continue to press the same issues under the guise of "tariffing" -- without so much as a glance in the direction of the Commission's orders and without any attempt to show that unbundling is feasible or necessary -- is wholly improper.

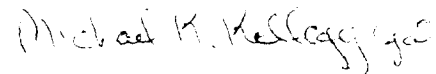
Accordingly, the Coalition believes that the appropriate course is for the Commission to approve the RBOCs' CEI plans. They faithfully comply with the terms of the payphone orders. The APCC's remaining demands -- which are in essence yet another plea for reconsideration -- should be rejected out of hand, handled through an ONA request, or be the subject of a separate proceeding.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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We look forward to working with you toward a prompt and mutually satisfactory solution.

Yours sincerely,



Michael K. Kellogg

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